



Attorney Docket No.: 5693P270

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application for:

Steven R. Kleiman

Serial No.: 09/590,027

Filing Date: 06/07/2000

For: COMMUNICATION OF CONTROL
INFORMATION AND DATA IN
CLIENT/SERVER SYSTEMS

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Examiner: Nguyen, Chau T.

Group Art Unit: 2176

Confirmation no.: 8740

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(Date of Deposit)

Andreas Radke

(Printed name)

Andreas Radke

(Signature)

4-5-07

(Date)

Pre-Appeal Brief Request for Review

Sir:

Applicants respectfully request pre-appeal brief review of the Final Office Action mailed on 1/8/2007. Submitted with this request is a Notice of Appeal under 37 C.F.R. § 41.31 and required fee.

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REMARKS

Claims 1-8 and 10 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,026,448 (Goldrian) in view of U.S. Patent No. 6,658,469 (Massa). Claims 12-26 were rejected under § 103(a) over Goldrian in view of Massa and U.S. Patent No. 6,499,028 (Brock). Claims 28 and 29 were rejected under § 103(a) over Goldrian and Massa in view of U.S. Patent No. 5,899,994 of Mohamed et al.

Pre-appeal reversal of a rejection is appropriate if the Examiner fails to establish a *prima facie* case to support the rejection. A *prima facie* case of obviousness requires that the Examiner show that *all of the claim limitations* are disclosed in the cited prior art. In re Vaeck, 947 F.2d 488, 20 USPQ.2d 1438 (Fed. Cir. 1991). Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness, as the Examiner has not provided a convincing rationale to show that all of the claim limitations are disclosed in the cited prior art. Furthermore, Applicant's arguments have shown the rejection to be incorrect.

Applicant maintains all of the arguments set forth in the remarks on pages 5-10 of Applicant's "Response to Final Office Action" filed on 2/26/2007, and those remarks are incorporated herein by reference. The reviewing panel is requested to carefully consider those remarks.

In the Final Office Action mailed on 1/8/2007, and in the subsequent Advisory Action, the Examiner makes *no* attempt to *rebut* Applicant's arguments. Instead, the

Examiner's response merely consists of an essentially verbatim repetition of the reasons stated in the prior Office Action. In the Advisory Action, the Examiner states:

In reply to this argument, since Applicant argued the same arguments that were already addressed in the non-final rejection mailed on 07/27/2006, therefore, the examiner argued back with the same responses in the Final rejection mailed on 01/08/2007.

Applicant respectfully submits that, thus far, the Examiner *has not addressed* Applicant's arguments regarding the current rejection, except by simply repeating the original rationale for the rejection. In the remarks of Applicant's last response, and in the previous response, Applicant *rebutted* in detail the Examiner's reasons for rejection, including discussion of the specific sections of the references cited by the Examiner; Applicant explained in detail *why* the cited disclosure does not disclose what the Examiner alleges. However, the Examiner has provided no explanation of *why* Applicant's rebuttal was considered to be incorrect. Applicant believes that this silence by the Examiner is significant, in that it shows that the rejection lacks merit.

Applicants respectfully submit that the rejection cannot reasonably be maintained in view of the absence of any genuine response by the Examiner to Applicant's arguments. MPEP § 706.02(j): "It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given a fair opportunity to reply."

Again, Applicant respectfully requests that the reviewing panel carefully consider the arguments set forth in the remarks on pages 5-10 of Applicant's "Response to Final Office Action" filed on 2/26/2007.

Conclusion

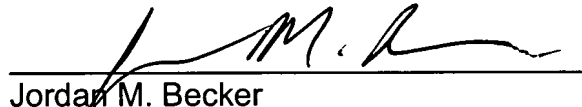
For the forgoing reasons, Applicants respectfully request reversal of the rejections in the Final Office Action.

If any additional fee is required, please charge deposit account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: April 5, 2007



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